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No. 80-1536

In the Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MARYLAND, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

Dameron v. *Brodhead*, 345 U.S. 322 4

Department of Employment v. *United States*, 385 U.S. 355 5

Sullivan v. *United States*, 395 U.S. 169 5

United States v. *Arlington County, Virginia*, 326 F. 2d 929 5

United States v. *Lewisburg Area School District*, 539 F. 2d 301 5

Constitution and statutes:

United States Constitution:

Article I, Section 1 4

Article I, Section 6 4

Soldiers' and Sailors' Civil Relief Act of 1940, Section 514, as added by ch. 581, Section 17, 56 Stat. 777, 50 U.S.C. app. 574 4

Tax Injunction Act, 28 U.S.C. 1341 ..... 1, 2, 3, 5

4 U.S.C. (Supp. III) 113 ..... 1, 2, 3, 4, 5

Md. Ann. Code art. 81, § 279(i) (Cum. Supp. 1979) 2, 3

Miscellaneous:

H.R. Rep. No. 95-377, 95th Cong., 1st Sess. (1977) 3, 4

S. Rep. No. 94-631, 94th Cong., 2d Sess. (1976) 3

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Petitioners seek review of the decision below upholding the validity of 4 U.S.C. (Supp. III) 113, which prohibits a state in which a Member of Congress maintains a place of abode solely for the purpose of attending sessions of Congress from treating the member as a resident or domiciliary of that state for purposes of imposing state and local income taxes.[1] They also seek review of the rulings of the courts below that the United States has standing to litigate the question and that 28 U.S.C. 1341, commonly known as the Tax Injunction Act, does not bar this suit.

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[1] 4 U.S.C. (Supp. III) 113 provides as follows:

(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income

The pertinent facts may be summarized as follows: The United States instituted this suit in the United States District Court for the District of Maryland against the State of Maryland and its Comptroller of the Treasury, Louis L. Gold ein, seeking a declaration that the imposition of local income taxes on Members of Congress who maintained places of abode in Maryland solely for the purpose of attending sessions of Congress was in violation of 4 U.S.C. (Supp. III) 113, and requesting that the State be restrained from collecting such taxes and be required to refund taxes previously collected in derogation of the federal statute (Pet. App. 8a n.9). The State moved to dismiss the suit urging, *inter alia*, that the United States lacked standing to bring the action and that the suit was barred by the Tax Injunction Act, 28 U.S.C. 1341 (A. 12-13).[2] Subsequently, the parties filed cross-motions for summary judgment (A. 14-19) and the case was submitted on an agreed statement of facts (Pet. App. 5a-9a). At the request of the parties, the district court severed the issues relating to the validity of the statute from those relating to the refund of the taxes previously collected (Pet. App. 8a n.9 & 39a).

The district court noted that the State of Maryland had adopted an income tax, that each political subdivision was required to adopt a local income tax that is calculable as a

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tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof—

(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or

(2) treat any compensation paid by the United States to such Member as income for services performed within, or from sources within, such State or political subdivision thereof,

unless such Member represents such State or a district in such State.

[2] "A." refers to the record appendix in the court of appeals.

percentage of the State tax, and that every "resident" as defined by Md. Ann. Code art. 81, § 279(i) (Cum. Supp. 1979), was subject to these taxes (Pet. App. 5a). The court assumed, as the State urged, that any Member of Congress who maintained a place of abode in Maryland for more than six months of a given year was a resident within the meaning of § 279(i) (Pet. App. 7a). The district court found that the State had denied claims for refund of income taxes that were based upon the federal statute and that some Members of Congress had paid the local taxes, while others apparently had not (Pet. App. 7a, 9a).

The district court sustained the validity of the federal statute, holding that it was within Congress's power to enact 4 U.S.C. (Supp. III) 113 (Pet. App. 9a-29a, 38a). In addition, the court held that the United States had standing to maintain the suit and that it was not barred by the Tax Injunction Act (Pet. App. 37a). The court of appeals affirmed for the reasons stated by the district court (Pet. App. 2a).

Petitioners' contention (Pet. 10, 13, 17-18) that Section 113 is unconstitutional and its subsidiary contentions regarding standing and the Tax Injunction Act are all premised upon the assumption that Section 113 serves only the personal pecuniary interests of individual Members of Congress and does not serve any legitimate interest of the federal government. This argument rejected by both courts below, is refuted by the legislative history of the statute. That history shows that Congress enacted Section 113 to alleviate the burden on its legislative function occasioned by the imposition of multiple state income taxes on its Members. In this respect, Congress was concerned that the threat of multiple state taxation "could be a very real deterrent to service in Congress to those who might seek election as well as those already elected." H.R. Rep. No. 95-377, 95th Cong., 1st Sess. 4 (1977); S. Rep. No. 94-631, 94th

Cong., 2d Sess. 7 (1976). Accordingly, in enacting Section 113, Congress sought to prohibit the taxation of its Members in other than their respective home states by declaring that a Congressman may not be deemed a resident for income tax purposes of any state other than the state he or she represents.[3] H.R. Rep. No. 95-377, *supra*, at 3.

The statute was modeled after Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (as added by ch. 581, Section 17, 56 Stat. 777, 50 U.S.C. app. 574) which was designed to establish a single residence for state tax purposes of members of the military service. See, generally, *Dameron* v. *Brodhead*, 345 U.S. 322 (1953). In enacting Section 514, Congress had determined that the imposition of multiple taxation on members of the military service constituted a burden on the national defense. *Dameron* v. *Brodhead, supra*, 345 U.S. at 325. There, this Court upheld Congress's power to allay this burden as a necessary and proper supplementary power to its powers to declare war and to raise and support armies.[4]

Here, Congress has determined that the incidence of multiple state taxation constitutes a burden on its legislative function. Under the principle established by *Dameron*, Congress has the power under Article I, Section 1, of the Constitution to enact such legislation as is necessary and proper to alleviate that burden. Moreover, protection of its

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[3]Petitioners state (Pet. 12) that Section 113 diminishes the power of the states to tax. It is obvious, however, that the statute does not forbid states to impose taxes upon the compensation of Members of Congress; rather, it simply designates which state is entitled to impose its income tax. See *Dameron* v. *Brodhead*, 345 U.S. 322, 325 (1953).

[4]Petitioners (Pet. 13-14) seek to distinguish *Dameron* on the ground that servicemen have no choice concerning where they reside, while Members of Congress can avoid the imposition of Maryland taxes by living in the District of Columbia. But *Dameron* did not turn on whether the servicemen involved there could have established an abode within a federal military enclave.

compensation is related to protection of its legislative function. Indeed, Article I, Section 6, of the Constitution expressly entrusts to the Congress the power to determine its own compensation. Thus, as both courts below correctly held, Congress acted within its constitutional authority in enacting Section 113.

Since Section 113 serves an important federal interest, the courts below correctly held that the United States has standing to maintain this suit despite its lack of an immediate pecuniary interest in the outcome. See *United States* v. *Arlington County, Virginia*, 326 F. 2d 929, 931-932 (4th Cir. 1964); *United States* v. *Lewisburg Area School District*, 539 F. 2d 301, 305 (3d 1976); see also *Sullivan* v. *United States*, 395 U.S. 169, 170 n.2 (1969). Moreover, it has long been settled that the Tax Injunction Act does not bar a suit by the United States to protect its interests. *Department of Employment* v. *United States*, 385 U.S. 355, 358 (1966).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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